STATE OF MICHIGAN

COURT OF APPEALS

THOMAS HAAS,

Plaintiff-Appellant,

v

CHARTER TOWNSHIP OF PLYMOUTH, CARL BERRY and ERIK MAYERNIK,

Defendants-Appellees,

and

POLICE OFFICERS ASSOCIATION OF MICHIGAN,

Defendant.

UNPUBLISHED
June 30, 2000

No. 197094
Wayne Circuit Court
LC No. 95-519054-CZ

Before: Cavanagh, P.J., and Holbrook, Jr., and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition to defendants Plymouth Township, Berry, and Mayernik, on plaintiff's claims of wrongful discharge, malicious prosecution, false arrest and intentional interference with a contractual relationship. We affirm.

Plaintiff was formerly a Plymouth Township police officer. Defendant Berry was the township's chief of police, and defendant Mayernik was a fellow township officer. On November 17, 1993, plaintiff assisted Mayernik and other officers in purging the police department's property room. According to plaintiff, he was told that items two years and older were going to be placed in the trash. Plaintiff admits that he took a bag with a case number from 1988 that contained two diamond rings. Apparently, other officers also took property for their personal use. Plaintiff alleges that on the following day he was informed by Mayernik that the rings were to be auctioned rather than discarded. Plaintiff returned the rings by placing them under Mayernik's office door. On February 11, 1994, plaintiff was arrested and charged with the larceny of two diamond rings worth over $100. On March

2, 1994, plaintiff's employment with defendant Charter Township of Plymouth was terminated. The criminal prosecution resulted in a directed verdict of acquittal. Thereafter, plaintiff filed the present suit.

Plaintiff first argues that the trial court erred in granting summary disposition on his wrongful discharge claim based on plaintiff's failure to comply with the six-month statute of limitations set forth in MCL 423.216(a); MSA 17.455(16)(a). We disagree. Although the trial court granted summary disposition pursuant to MCR 2.116(C)(10), the more appropriate court rule is MCR 2.116(C)(7) (claim barred by statute of limitations). Accordingly, we review the trial court's decision as though it were made pursuant to the more appropriate court rule. *Shirilla v Detroit*, 208 Mich App 434, 436-437; 528 NW2d 763 (1995).

We review a trial court's ruling under MCR 2.116(C)(7) de novo to determine if the moving party was entitled to judgment as a matter of law. *Limbach v Oakland Co Bd of Co Rd Comm'rs*, 226 Mich App 389, 395; 573 NW2d 336 (1997). "When reviewing a motion for summary disposition under MCR 2.116(C)(7), the trial court accepts the plaintiff's well-pleaded allegations as true and construes them in the plaintiff's favor." *Dewey v Tabor*, 226 Mich App 189, 192; 572 NW2d 715 (1997). We consider the pleadings as well as any affidavits, depositions, admissions, or documentary evidence submitted by the parties. *Horace v Pontiac*, 456 Mich 744, 749; 575 NW2d 762 (1998).

In the present case, a collective bargaining agreement between Plymouth Township and defendant Police Officers Association of Michigan (POMA) provided a mandatory grievance and arbitration procedure. On March 2, 1994, in accordance with that procedure, plaintiff filed a grievance through POMA, claiming that he was discharged without just cause and requesting reinstatement of his employment. Berry reviewed the grievance and determined that plaintiff was terminated for just cause. The union appealed that decision to the township supervisor, who affirmed Berry's determination. Thereafter, POMA rejected plaintiff's request that it submit the grievance to arbitration. In April 1994, the time period during which POMA could have submitted plaintiff's grievance to arbitration expired. Plaintiff filed his complaint on June 30, 1995.[1]

It is well settled that the six-month statute of limitations period set forth in MCL 423.216(a); MSA 17.455(16)(a) applies to hybrid lawsuits in which the plaintiff's allegations of wrongful discharge and unfair representation are premised on an alleged violation of an applicable collective bargaining agreement. See *Leider v Fitzgerald Ed Ass'n*, 167 Mich App 210, 216; 421 NW2d 635 (1988); *Meadows v Detroit*, 164 Mich App 418, 434; 418 NW2d 100 (1987); *Romero v Paragon Steel Div, Protec, Inc (On Remand)*, 129 Mich App 566, 571; 341 NW2d 546 (1983). The decision to apply this statute of limitations time period as opposed to any other is based on the following policy rationale:

> "Where the parties have contracted to settle claims among themselves, their final decisions should not be exposed to collateral attack for long periods but should

[1] Included was a claim that POMA breached its duty of fair representation in refusing to pursue arbitration. Plaintiff later voluntarily dismissed that claim against the union.

> become final rather quickly. . . . Otherwise, the internal system will be just another step in a lengthy process of litigation rather than an efficient and unitary method of disposing of the high volume of grievances generated under any large scale employment contract." [*Meadows, supra* at 434-435, quoting *Romero, supra* at 569 (citation omitted).]

See also *Glowacki v Motor Wheel Corp*, 67 Mich App 448, 462; 241 NW2d 240 (1976) (observing that public policy favors the application of the same statute of limitations to claims "so intimately related").

Both plaintiff's claims of wrongful discharge and unfair representation were premised on the allegation that he had been fired from his job without good or just cause, as is required by the collective bargaining agreement. Plaintiff's voluntary dismissal of his breach of duty of fair representation claim against his union does not alter the applicable limitations period. Allowing plaintiff's wrongful discharge claim under such circumstances would be contrary to the policy of not exposing parties who have contracted to settle their claims among themselves to long periods of collateral attack. Therefore, we conclude that the trial court properly dismissed the wrongful discharge claim as untimely.

Plaintiff argues next that the trial court erred in granting summary disposition on the basis that Mayernik was entitled to governmental immunity.[2] We disagree. MCL 691.1407(2); MSA 3.996(107)(2) provides:

> Except as otherwise provided in this section, and without regard to the discretionary or ministerial nature of the conduct in question, each officer and employee of a governmental agency, each volunteer acting on behalf of a governmental agency, and each member of a board, council, commission, or statutorily created task force of a governmental agency shall be immune from tort liability for injuries to persons or damages to property caused by the officer, employee, or member while in the course of employment or service or volunteer while acting on behalf of a governmental agency if all of the following are met:
>
> (a) The officer, employee, member, or volunteer is acting or reasonably believes he or she is acting within the scope of his or her authority.
>
> (b) The governmental agency is engaged in the exercise or discharge of a governmental function.
>
> (c) The officer's, employee's, member's, or volunteer's conduct does not amount to gross negligence that is the proximate cause of the injury or damage. As

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[2] Plaintiff does not challenge the trial court's rulings that Plymouth Township and Berry are entitled to governmental immunity from plaintiff's tort claims. See MCL 691.1407(1) and (5); MSA 3.996(107)(1) and (5).

used in this subdivision, "gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

Plaintiff's assertion of error is based on the allegation that Mayernik committed gross negligence when the officer reported the theft of the rings without disclosing what plaintiff contends is "the whole truth" about the incident.[3] We find no merit to this argument. Plaintiff has, at all times, admitted that he took the rings and has not disputed that he removed them from a box within the property room marked, "items for auction." Plaintiff also admits that he returned the rings after being confronted by Mayernik. Plaintiff has not disputed defendants' assertion that one of the rings was missing two diamonds when it was returned. Plaintiff's admissions were sufficient bases for his termination and prosecution. Under these circumstances, we do not believe Mayernik's alleged failure to disclose information to investigators regarding the level of instruction given to plaintiff during the purging and other officers' involvement in taking property was grossly negligent. Accordingly, we conclude that the trial court properly granted summary disposition under MCR 2.116(C)(7) to Mayernik on plaintiff's tort claims. Given that immunity, we find it unnecessary to review plaintiff's arguments on appeal regarding the merit of his particular claims of malicious destruction of property, false arrest and intentional interference with a contractual relationship.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Donald E. Holbrook, Jr.
/s/ Michael J. Kelly

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[3] It is undisputed that Mayernik was an employee of Plymouth Township and that the investigation into plaintiff's conduct was the exercise of a governmental function. See *Isabella Co v State of Michigan*, 181 Mich App 99, 105; 449 NW2d 111 (1989); *Hill v Saginaw*, 155 Mich App 161, 170; 399 NW2d 398 (1986). We also believe that Mayernik was operating in the course of his employment and within the scope of his authority.